REMARKS

Claims 1 to 10 and newly added claim 11 are pending in this application. Claims 3 and 4 are considered withdrawn from consideration. Claims 1, 2 and 5 to 9 are rejected under 35 U.S.C. §112, first paragraph. Claims 5, 9 and 10 are rejected under 35 U.S.C. §102(b). Applicants request reconsideration and withdraw of the rejections for the reasons set forth herein.

Improper restriction requirement

The Examiner's action dated October 29, 2007 was clearly an election of species request and not a restriction requirement. The Detailed Action sent by the Examiner did not include a grouping into identifiable groups from which the applicant could have chosen. Instead the Examiner used standard election of species language. After applicants elected a species and specifically indicated that their understanding that the action was not a restriction, the Examiner appears to have changed the election of species request to a restriction requirement and made it final. Applicants contend the prior action was an election of species, that no prior art was found that anticipated or rendered obvious compound claim 1, the entire scope of claim 1 has already been searched and, in view of the above amendments, compound claim 1 is considered allowable. As such, there is no justification for dividing claim 1 in a manor that requires dependent claims 3 and 4 to be restricted. Applicants specifically note that the cited compound from Watanabe et al. (i.e. (2-{[3-(methyloxy)phenyl]amino}-6-(4-pyridinyl)-4(1H)-pyrimidinone) is not even within the scope of compound claim 1.

Moreover, the instant invention was filed under the provisions of 35 U.S.C. §371 as a national stage filing of a PCT patent application. Thus, the standard applicable to the instant application is not one of restriction practice under U.S. guidelines, but of Unity of Invention under the PCT. *See* MPEP § 1896. In the instant case no lack of Unity of Invention was found by the International Searching Authority or the International Preliminary Examining Authority (both issuing from the U.S. Patent & Trademark Office), and all claims were searched and examined as one invention. The question of Unity of Invention may be reexamined only within the scope of rules of the Patent Cooperation Treaty (35 U.S.C. § 372), and restriction requirements made according to U.S. practice, which are more restrictive that the PCT regulation are in error. Patent Cooperation Treaty, Art. 27 ("no national law shall require compliance with requirements relating to form or contents ... different from or additional to those which are provided for this Treaty and the Regulations"). Therefore, the Examiner must find error in the application of the

rules by the International Search Authority. There is no allegation in the outstanding Office Action indicating that the International Search Authority committed an error in applying the rules for Unity of Invention.

Moreover, PCT Rule 13.2 specifically states that the requirement of Unity of Invention is fulfilled "when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features". The Examiner requires restriction according to U.S. practice, but this conflicts with PCT Rule 13.2 and must give way to the PCT rule.

Because a proper restriction requirement was never issued, the entire scope of the claimed invention has already been searched and nothing in the art of record anticipates or renders obvious compound claim 1, applicants submit that claim 1 should not be the subject of restriction and respectfully request rejoinder of compound claims 3 and 4.

The Rejection of Claims 1, 2 and 5 to 9 Under 35 U.S.C. §112, first paragraph

Claims 1, 2 and 5 to 9 are rejected under 35 U.S.C. §112, first paragraph, as the terms "solvate" and "physiologically functional derivative thereof" are considered not to comply with the written description requirement. Applicants contend that the skilled worker in view of the specification would readily understand that the compounds of the invention included solvates and the indicated derivatives. However, in order to expedite allowance, the offending terms have been removed from the claims by the above amendments.

In view of the above amendments applicants respectfully request that the rejection here be withdrawn.

The Rejection of Claims 6 to 8 Under 35 U.S.C. §112, first paragraph

In applicable part, claims 6 to 8 are rejected under 35 U.S.C. §112, first paragraph, as the terms "treating and preventing" and "diseases of the erythroid and hematopoietic systems, caused by hYAK3 imbalance or inappropriate activity" are considered not to comply with the written description requirement. (The terms "solvate" and "physiologically functional derivative thereof" were removed in response to the previous rejection). Applicants contend that the skilled worker in view of the specification would readily understand how to use the compounds of the invention as indicated in claims 6 to 8. However, in order to expedite the allowance, claims 6 and 7 have been canceled and claim 8 has been amended to refer only to "treating" and only to specified disease states. Thus, the term "preventing" has been removed from the claims. Further,

the specified disease states are believed to be fully supported by the state of the art as indicated in the background of the invention and the biological data in the application.

In view of the above amendments and remarks, applicants respectfully request that the rejection here be withdrawn.

The Rejection of Claims 5, 9 and 10 Under 35 U.S.C. §102(b)

Claims 5, 9 and 10 are rejected under 35 U.S.C. §102(b) as being anticipated by Watanabe et al. as page 25, table 1, example 54 and page 73, example 20 are considered to disclose (2-{[3-(methyloxy)phenyl]**amino**}-6-(4-pyridinyl)-4(1H)-pyrimidinone (emphasis added) as tau kinase inhibitors in the treatment of Alzheimer disease. The Examiner then concludes that applicants use of (2-{[3-(methyloxy)phenyl]**amino**}-6-(4-pyridinyl)-4(1H)-pyrimidinone (emphasis added) (the compound of instant Example 44) as an hYAK3 inhibitor in treatment of anemia etc, is inherent.

Applicants wish to point out that Watanabe et al. as page 60, table 1, example 430 and page 91, example 93 discloses (2-{[3-(methyloxy)phenyl]amino}-6-(4-pyridinyl)-4(1H)-pyrimidinone. Not the passage cited in the outstanding Office Action.

Regarding claim 5

Claim 5 has been deleted. The only remaining method of treatment claim is claim 8. Claim 8, as amended herein, is believed to comply with standard United States Patent Office practice regarding second use indications.

Because claims 5 has been deleted and claim 8 was never rejected under Watanabe et al., applicants request that the rejection here be removed with regard to the currently claimed methods.

Regarding claim 9

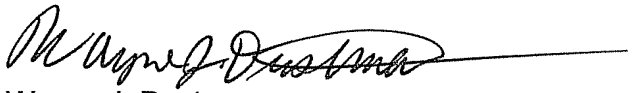
Claim 9 has been amended so that R^1 can not be pyridine. Applicants submit that, in view of the above amendments, Watanabe et al. does not render claim 9 anticipated or unpatentably obvious and request that the rejection here regarding claim 9 be withdrawn.

Regarding claim 10

By the above amendments, (2-{[3-(methyloxy)phenyl]amino}-6-(4-pyridinyl)-4(1H)-pyrimidinone has been deleted from claim 10. Applicants submit that, in view of the above amendments, Watanabe et al. does not render claim 10 anticipated or unpatentably obvious and request that the rejection here regarding claim 10 be withdrawn.

Applicants therefore submit the all reasons for rejection have been addressed and that the claims, as amended, are allowable. Applicants again request rejoinder of claims 3 and 4. Should the Examiner have any questions of wish to discuss any aspect of this case, the Examiner is encouraged to call the undersigned attorney at the number indicated below.

Respectfully submitted,



Wayne J. Dustman
Attorney for Applicants
Registration No. 33,870

GLAXOSMITHKLINE
Corporate Intellectual Property - UW2220
P.O. Box 1539
King of Prussia, PA 19406-0939
Phone (610) 270-5023
Facsimile (610)270-5090
n:\wjd\yak-3 Dyrk\TC00008\response1.doc